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Mayor

# CITY OF NEWTON, MASSACHUSETTS

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## CONSERVATION COMMISSION MEETING MINUTES

**February 26, 2009**

Beginning at 7:30 p.m.

City Hall, Rm 209

**MEMBERS PRESENT:** I. Wallach, Chair, S. Lunin, Vice-chair, D. Green, N. Richardson, R. Matthews and J. Hepburn (who arrived about 8 p.m.)

**MEMBERS ABSENT:** D. Dickson

**MEMBERS OF THE PUBLIC:** See attached sign-in sheet

**140 Brandeis Road Newton South High School- NOI** for construction of a new track with inset synthetic turf football field and associated grading located partly within the 100 ft buffer zone to bordering vegetated wetland.

**Report:** Review of all materials available supports previous conclusions of no harm to adjacent wetlands (or to the Charles). Draft findings and draft conditions included in the packets – Gale Assoc. thinks the crumb rubber does not migrate much, but a draft condition is proposed to be implemented IF crumb rubber is found to be migrating into catch basins, trench drain, or to base of wind fencing. The condition would allow Env. Planner to employ a protocol to test for presence of crumb in the wetland. The exact protocol for testing can be detailed in a separate document by the Planner. The applicant is aware of the exact wording of this condition and does not have any strong objection. Also, the Commission may have special conditions from the packet of conditions other Commissions have used, beyond the standard conditions.

**Meeting:** Lou Taverna, City Engineer, and Nathan Collins, Gale Associates, were present to answer any additional questions of the Commissioners. N. Richardson requested additional information from Gale Assoc. on one of the compounds that may be dangerous in very small amounts. He also expressed concerns about particulate emissions and the possibility of groundwater pollution. He said he would like to know more about the hydrology and horizontal movements of water underlying the field. The Environmental Planner said we needed to know more than that the leachate has the potential to harm the wetlands – need to know that it is likely to harm the wetlands. N. Collins said leachate weaker than in studies of concentrated leachate and will not be concentrated enough to harm wetlands. I. Wallach referenced letter submitted by G. Mirfendereski (dated 1-22-2009, submitted at meeting), statement 4, page 7, which implies that the wetland delineation is inaccurate and that the applicant had cleared vegetation from the wetland area. N. Collins reported he believes their scientist flagged correctly. The Environmental Planner, A. Phelps, reported on her site visit she observed a sharp break in slope along the wetland line paralleling the chain-link fence, with wetland vegetation at the

### Conservation Commission

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bottom of the slope (including invasive *Phragmites*) and upland vegetation at the top of the slope. The almost 90 degree change in the flag line (at WF#GA12) did not correlate with an obvious change in vegetation or topography, causing Anne to telephone the engineer who delineated the site. Anne believes the person who delineated the site can back up his flag line with soil data. I. Wallach asked if there is a vernal pool on the site. Both Anne and Gale said there is no vernal pool. All parcels mentioned are owned by the City (even though some parcels are listed as belonging to Parks and Recreation and others listed as owned by the School Department/City of Newton). The fields need repair/rehabilitation and the BOA approved two fields. There are no alternatives warranted for the same time period (the syn-turf is guaranteed for 8 years). Discussion as to whether other materials considered. A representative for an alternative product spoke. Anne's conclusion is that any problem will come from crumb rubber migration. If there is evidence of crumb rubber moving the Commission can issue a violation notice and have testing done. The Commission reviewed Orders of Conditions issued by Sudbury, Needham, Wayland and Quincy for syn-turf fields in wetland jurisdictional areas. **D. Green moved to issue an Order of Conditions with standard special conditions and 2 special conditions recommended by Environmental Planner for monitoring to see if crumb rubber travels, and to require low-lead materials, and with two additional special conditions: that no herbicides or pesticides be used in the buffer zone and that substrate sampling along the wetland edge be conducted for heavy metals as a baseline if later testing is deemed necessary. Motion seconded by R. Matthews. Vote: R. Richardson and I. Wallach voted "nay." R. Matthews, J. Hepburn, S. Lunin, and D. Green voted "aye." Motion carried.**

**32 Williams St. – NOI** – continued from 2007- with new plan for 2-family dwelling and driveway in riverfront to the Charles River. A scope of alternatives was submitted.

**Report:** Lot of 9820 sf in riverfront (listed as 6390 sf), with single family house of 1150 sf (11.7% of 9820 sf riverfront). Proposal is to raze the building and build 2-family house with driveway, totaling 3900 sf, 39.7% riverfront. Last meeting the Env. Planner reviewed the alternatives analysis submitted by the applicant, and reported that she could not duplicate it using the stated criteria, and said the cost of a lot is strongly correlated with the [stated] size of the lot. There were several other lots for sale for a similar price, with the same zoning, and in the same area at the time the lot was purchased, but which were not in riverfront. The CC then asked whether part of the work is re-development. I was told (by DEP) to "refer to the regulations." 10.58(5) says, **"Redevelopment means replacement, rehabilitation or expansion of existing structures,...or reuse of degraded or previously developed areas....A previously developed riverfront area contains areas degraded prior to August 7, 1996 by impervious surfaces from existing structures or pavement, ..."** The proposed house is a replacement structure for an existing structure built prior to August 7, 1996, and is clearly redevelopment. I would consider the entire lot to be redevelopment, as a 'reuse of a previously developed area,' but many, perhaps even most towns do not consider it so. Applicant's alternatives analysis also attempted to rebut "presumptions of significance" for riverfront and asserts only flood zone and bank are significant. I would suggest the CC vote on each interest to be protected and whether it has been rebutted in whole or in part. **Meeting:** Lisa Standley, VHB, and Ruti Robart present and submitted new material dated February 26, 2009, addressing "Comparable Projects," "Off-Site Alternatives Analysis," and "Restoration Plan." Planner noted her prior comments regarding disagreement with the flagging of top of bank have not been addressed, nor has engineering's request for an additional percolation test been addressed. Planner's notes indicate this project is a redevelopment, and DEP comment letter says to address how project meets the interests under 10.58(4) for new development. Applicant still says all of lot is new development. Planner says area of existing house, at least, is redevelopment, and applicant needs to address that. R. Freed, former member of the Conservation Commission, recommended it be treated as "blended" development when project first submitted to Commission. Planner asks that applicant be responsive to Conservation Commission policy that new material be submitted two Tuesdays prior to the meeting so the Planner can include it in Commission packets. I. Wallach seconded that request. Applicant agreed to continue to March 26<sup>th</sup> meeting at 7:30 p.m.

**45 Harwich Road –RDA** to tear down and re-build a single-family house in the 100 ft buffer zone to bordering vegetated wetland – continued for more information.

**Report:** Snow cover and frozen ground has still prevented getting soil samples, at this time.

**Update:** - Owner requested (via email) continuance to Mar. 26<sup>th</sup>, 2009. Conservation Commission agreed to continue.

**295 California Street – RDA** for 75 sf trenching to install cable for telecommunications antenna in the 200 ft riverfront to the Charles. Mitigation plantings are proposed.

**Report:** If you recall, Verizon filed to install a stealth antenna in an existing flagpole at this site, and as a redevelopment in riverfront project, the applicant agreed to remove concrete ‘covers’ from parking islands and plant all of those in riverfront with hardy native plants. This project is sort of ‘piggybacking’ onto the Verizon project, but needs a separate trench in riverfront in area currently paved by asphalt and proposes a new concrete platform (about 10 sf) in an area where Verizon removed concrete to plant (Verizon installed plants but has not received a COC yet). Applicant proposes a shrub to be planted as mitigation.

**Meeting:** Francis Parisi represented MetroPCS. He said the trenching is necessary to connect the flag pole in the 200 ft riverfront. The issue is the concrete “doghouse” that would restore impervious surface in an area in which Verizon has removed concrete and performed mitigation plantings for their stealth flagpole installation. Mr. Parisi agreed he would be willing to plant 50 sf of native-species shrubs wherever the Planner wants them, and obtain a 1-year maintenance contract for the shrubs (a copy to be supplied to the Planner) as mitigation for his work. **Motion by D. Green to approve proposed project with mitigation as described. Second by S. Lunin. Vote: All in favor. Motion carries.**

**63 Grace Road**-Owner with proposed cantilevered deck – is filing needed?

**Report:** House built prior to WPA and there is a tiny back yard area between house and Saw Mill Brook on edge of Saw Mill Brook Conservation Area. GIS shows whole lot is in riverfront, and deck will be over 30 ft flood zone, and bordering vegetated wetland. Easement plan (6/06) for Upper Neponset Valley Replacement Sewer MWRA (same project as along Kessler easement, I think) shows delineation of BVW going around yard. There may have been fill just behind the house when the house was built, and creation of the lawn prior to the WPA means it is “grand-fathered.” So, even if soils under lawn are still hydric, an over-hanging deck should not impinge on any wetland vegetation or habitat, except the river itself. The fence along the river was (we think) constructed by the city (DPW) and Engineering has no objection to the deck as long as it does not restrict access to the channel. It seems unlikely that the deck will affect the resource area.

**Meeting:** Owner Sylvia Crawford present to describe project. Commission questioned applicant about lighting. Applicant agreed no bright light on deck. Commission does think there will be any impact. Planner will issue letter that no filing is needed.

**2345 Commonwealth Ave. -Marriott** – wants to add recycling dumpster within riverfront, but 50 ft farther away from river than existing dumpster. Will replace asphalt substrate with concrete pad underneath. Do they need a filing? Work is within the 200 ft riverfront, about 50 ft further from river and in a paved area to be replaced by concrete, but not altering the area of impervious surface.

**Meeting:** No one was present for Marriott. Anne described request. The Commission determined that no filing is necessary. Anne will send a letter.

### **Violations –Updates**

#### **Houghton Garden – paint violation**

**Report:** Ms. Hollis has paid for ½ the cost of clean-up and a letter has been received (in packet) apologizing for the damage. Planner issued letter requiring, “check from Mr. Weil and a separate letter from each of you shall be due no later than March 17, 2009,” noting that students did not inform the CC they would be out of the country, and noting enforcement action may result.

**Update:** –Research report from Ms. Hollis & Mr. Weil and letter from Mrs. Hollis received Feb. 23<sup>rd</sup> – Anne has them.

**15 Harwich Rd –Violation** –New EO issued last meeting. The EO could not be delivered to the address given us by Mr. Feinberg. It was hand delivered to Mr. Feinberg on 2-12-09 at ISD counter. The 30-day deadline for filing for the fence, “within 30 calendar days of issuance of this Enforcement Order,” will expire on March 11. The deadline for the approved delineation, planting and site plan is May 5.

**18 Rockland**

**394 Boylston St.**

**160 Pine St – Gazebo** – plan for work has been approved by engineering; contractor needs to get permits and inspections from engineering and from Env. Planner. Plan now approved to proceed.

**1203&1211 Washington** –New catch basins found on property – will be hooked up to Stormceptor which has enough capacity.

**93 Andrew St**

**3 Fuller**

**Certificates of Compliance** (\*needs action)

**MWRA at Kessler**

**15 Marla Circle**

**1676 Commonwealth**

**11-19 Hargrove Circle**

**Announcements & General Business:**

**December 2009 Meeting Minutes** for approval

**Meeting: Motion by S. Lunin to approve December meeting minutes. Seconded by D. Green. Vote: All approved. Motion passed.**

**January, 2009 Meeting Minutes** for approval

**Meeting: Motion by S. Lunin to approve January meeting minutes. Seconded by D. Green. Vote: All approved. Motion passed.**

**MACC Spring Conference Feb. 28<sup>th</sup>**

**Marriott Hotel** – The BOA issued a Board Order for the changes made by the Marriott without prior permission. In consideration, the Marriott agreed to provide \$40,000 for installation of a crossing light on Comm. Ave. to be constructed within 4 years. If it is not built, then the Marriott shall “...provide \$20,000 to the City for improvements in Norumbega Park...”

**Outstanding issues – discussion**

**Proposed ordinance – alternate members** – passed by the BOA 2-18-09

Non-criminal ticketing – report

Performance Bond – memo sent to comptroller to set up accounts

**Other**

Respectfully submitted,

Anne Phelps, Sr. Environmental Planner